



OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

8-3209
GERALD C. MANN
ATTORNEY GENERAL

Honorable Ralph Elliott
Criminal District Attorney
Sherman, Texas

Dear Sir:

Opinion No. 0-3209
Re: Constitutionality of part
of Article 1645a-1, as
amended, R. C. S., 1925,
which applies to Grayson
County.

Your request dated February 24, 1941, for an opinion
from this department has been received and considered. We
quote from your letter:

"I desire an opinion upon the following
questions:

"1. Can the Commissioners Court of
Grayson County legally and lawfully create
and appoint the office of purchasing agent
under the order of January 30, 1941, as here-
inafter set out:

"January 30, 1941. The County Commis-
sioners Court; of each county in Texas is the
governing body of the county. Upon them rests
the responsibility of the County Purchasing
and County Charity, etc.

"Under special law the Grayson County
Commissioners Court has heretofore employed
the County Auditor, as purchasing agent and
he has further assisted the Commissioners
Court in looking after feeding prisoners in
the County jail and many other general duties
around the Courthouse, including county re-
lief.

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"We are this day in receipt of a letter signed by District Judges R. C. Slagle and Tom Suggs, stating it was their opinion the County Auditor should not have to perform the duties of purchasing agent for good reasons set out in their letter, which has been placed in the minutes of the Commissioners Court.

"It being the desire of the Commissioners Court to cooperate with the District Judges and the County Auditor's office, in their request, we find it impossible for the County Judge or the Commissioners to do the additional work heretofore performed by the purchasing agent. It is our judgment we should employ a capable man to assist the Commissioners Court in the said purchasing and County relief work, as well as many other duties to be performed by him in the interest of economy and efficiency.

"We hereby employ Mr. C. H. Barrett to assist the Commissioners Court in the above stated duties and set his salary at \$150.00 per month. This does not entail additional County expense, as it has been costing more than this amount heretofore to perform these duties.

"Effective Feb. 1st, 1941.

"Adopted."

"2. Can the County Auditor of Grayson County legally and lawfully approve the payment of warrants drawn for salary and/or expenses for this office under this creation and appointment?

"Is the following portion of Article 1645a-1 as amended, R. C. S. 1925 constitutional?

"Provided, further, that in all counties having a population in excess of sixty-five thousand (65,000) inhabitants according

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to the last preceding Federal Census, and having a tax valuation of not more than forty million dollars (\$40,000,000), according to the last approved tax rolls, and containing at least two incorporated cities of more than thirteen thousand five hundred (13,500) population each, according to the last preceding Federal Census, such Auditor shall, in addition to his regular duties as Auditor, constitute the Purchasing Agent of such county when so directed by order of the Commissioners Court of such County, and such Auditor shall receive as compensation for such additional services as purchasing agent a sum not to exceed nine hundred dollars (\$900) annually, payable in twelve (12) equal monthly installments, and such compensation shall be in addition to that allowed by law for such auditor, and payable out of the general revenue of such county. As added Acts 1937 45th Leg., p. 639, Ch. 3131; amended Acts 1939, 46th Leg., Spec. L., p. 600, 1."

Since we have written an opinion in response to your request, we have received a request from Honorable W. P. Waldrop, County Auditor of Grayson County, in which request he enclosed certified copies of orders of the commissioners' court showing that the original order dated January 30, 1940, as passed by said court appointing C. H. Barrett to assist the commissioners' court of Grayson County in purchasing duties and as county relief work assistant, was rescinded February 20, 1941, and C. H. Barrett was appointed county case worker. In view of these circumstances and because we have answered the questions submitted by the County Auditor in Opinion No. O-3231, a copy of which is enclosed to you for your information, we have thought that some of the questions submitted in your request are now moot and that it is unnecessary to answer them. We do believe that the question of the constitutionality of the portion of Article 1645a-1, Revised Civil Statutes, 1925, as amended, should be passed upon.

The provision of Article 1645a-1, as amended, Revised Civil Statutes of Texas, 1925, which you say, is applicable to Grayson County is set out in your request and will not again be copied here. It will be noticed that the provisions of the statute are very restrictive. This department in Opinion No.

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O-1748 has previously ruled that a portion of Article 1645a-1 was unconstitutional. For the reasons given in the Opinion No. O-1748, a copy of which is enclosed, it is our opinion, and you are so advised, that that portion of Article 1645a-1, as amended, Revised Civil Statutes, 1925, which you have copied in your request, is unconstitutional and void as being a special law regulating county affairs in violation of Article 3, Section 56, Texas Constitution.

We trust that we have fully answered your inquiry.

Yours very truly

ATTORNEY GENERAL OF TEXAS

By *Harold McCracken*
Harold McCracken
Assistant

HM:RS

ENCLOSURE

APPROVED MAR 28, 1941

Frank B. Mann
ATTORNEY GENERAL OF TEXAS

